

***NPDES Voluntary Permit Fee Incentive for Clean Water Act
Section 106 Grants; Allotment Formula***

QUESTIONS AND ANSWERS

1. What is the Clean Water Act (CWA) Section 106 Grant Program?

Section 106 of the CWA authorizes EPA to provide grants to states, interstate agencies, and tribes to administer programs for the prevention, reduction, and elimination of water pollution. Section 106(b) of the CWA directs the EPA Administrator to make allotments “in accordance with regulations promulgated by him on the basis of the extent of the pollution problem in the respective states.” EPA’s regulations implementing Section 106 can be found at 40 CFR 35.160 et seq. EPA’s current allotment formula for Section 106 grants establishes an allotment ratio for each state based on six components selected to reflect the extent of the water pollution problem in the respective states. These six components are: surface water area, ground water use, water quality impairment, potential point sources, nonpoint sources, and the population of urbanized areas (40 CFR §35.162 (b)(1)(i)). By including a component related to point sources, EPA recognizes the important role they play in determining the extent of pollution in a state.

2. What is the NPDES permit program?

Water pollution degrades surface waters making them unsafe for drinking, fishing, swimming, and other activities. As authorized by the CWA, the National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. The CWA generally prohibits the discharge of pollutants from a point source into waters of the United States except as in compliance with specified provisions of the Act. Among these provisions is CWA Section 402, which authorizes EPA and authorized states to issue permits for such discharges under the NPDES program. An NPDES permit includes technology-based effluent limits and any more stringent limits necessary to meet applicable water quality standards. EPA oversees the NPDES program and also approves applications from states to administer and enforce the NPDES program in that state. In most cases, the NPDES permit program is administered by authorized states. There are only five states that do not administer their own NPDES program: Idaho, New Mexico, Alaska, New Hampshire and Massachusetts.

3. How are state NPDES permit programs funded?

State permit programs are funded with a mixture of state and federal dollars, including funds awarded through grants under CWA Section 106. The growing complexity of water quality issues and the growing resource needs associated with addressing these issues have prompted more states to implement fee programs for the issuance of permits under the NPDES program. However, a number of states still operate their permit programs with little or no reliance on permit fees.

4. *What is the purpose of the NPDES Voluntary Permit Fee Incentive for Clean Water Act Section 106 Grants (Permit Fee Rule)?*

The Permit Fee Rule is intended to provide a financial incentive to states to utilize an adequate fee program when implementing an authorized NPDES permit program.

5. *What is the size of the permit fee incentive pool that EPA is establishing with this rulemaking?*

The size of the incentive is three percent of the FY 2008 total state allotment. The total FY 2008 state allotment is approximately \$171 million. Three percent of \$171 million is \$5.13 million.

6. *Why is EPA issuing this Rulemaking and when is it effective?*

EPA is committed to finding effective and efficient and sustainable state water pollution control programs that continue to ensure that the nation's waters are clean and protected. This rulemaking is designed to provide an incentive for states to move toward greater sustainability in the way they manage and budget for environmental programs and to shift part of the financial burden to those who benefit from NPDES permits. Funding NPDES permit programs with the support of permit fees will allow states to use CWA Section 106 funds for other critical water quality programmatic activities. This rule will be effective with the FY 2009 grant cycle and beyond.

7. *What is covered by the Notice of Final Rulemaking?*

The rule provides the background and reasoning for EPA's decision to create financial incentives for states to implement adequate NPDES fee programs. The rulemaking also outlines the changes to the CWA Section 106 grant allotment formula and summarizes the eligibility criteria for the incentive, the incentive application process and the reporting requirements.

8. *Who is affected by the Rule?*

The rulemaking will affect state agencies, particularly those states that certify and are found eligible to receive additional monies under the permit fee rule. By extension, the rule also may impact entities that request permits under the NPDES program. The fee incentive will only be offered if Section 106 funding increases above FY 2008 level. State Section 106 grants will not decrease as a result of this rulemaking.

9. *Must a state establish or expand its permit fee program?*

No, it is not mandatory for any state to apply for the funds, nor is EPA requiring states to change their permit fee structures as a condition of water quality program grant funding. However, in order to encourage more sustainable water quality programs, the incentive funds will only be available to those states that meet the conditions outlined in the rule. States may use the incentive funds to support all eligible water quality activities allowed under the grant.

10. *How will funding for core water quality programs be impacted?*

State funding for core water quality programs from Section 106 grants will not be impacted by the rule. Each state will continue to receive the same level of funding they received in FY 2008. If there is a state grant allotment increase in future years, the first \$5.1 million of the increase may be used to fund the incentive program. Any remainder will be distributed to the states. The total incentive will never exceed approximately \$5.1 million.

11. *How will future state allotment increases or cuts be impacted by the incentive fund?*

The size of the incentive will never exceed approximately \$5.1 million, regardless of the amount of future increases. Once the incentive is fully funded, it will not have an impact on any subsequent increases to the state allotment. If funding for the Section 106 program falls below the FY 2008 level, no funds will be made available for the incentive program.

12. *Who is eligible for the incentive?*

The only states that will be eligible for this set-aside are those states authorized by EPA to implement the NPDES program by the first day of the fiscal year, October 1, for which funds are appropriated by Congress. To be eligible for this set-aside, these States must also submit annually a certification to EPA (to the attention of the Regional Administrator). For FY 2009, the certification must be postmarked by November, 14, 2008. For every year thereafter, the required certification must be postmarked by October 1. The certification must meet the following two requirements. First, the certification must include the total NPDES state program costs, the percentage of NPDES program costs recovered by the state through permit fee collections during the most recently completed state fiscal year, and a statement that the amount of permit fees collected is used by the state to defray NPDES program costs. This rule defines NPDES program costs as all activities relating to permitting, enforcement, and compliance. Second, the certification must include a statement that state recurrent expenditures for water quality programs have not decreased from the previous state fiscal year, or indicate that a decrease in such expenditures is attributable to a non-selective reduction of the programs of all executive branch agencies of the state government.

13. *How will the incentive be allocated?*

After EPA determines the number of eligible states, each state will receive up to a full share of the set-aside amount. EPA will determine the amount of a full share by dividing the set-aside amount by the number of eligible states. A full share will be the same amount for each eligible state. The percent of a full share that each eligible state will receive, however, will be determined by the following formula, based on the certification information described above.

- (A) A state will receive 25 percent of a full share if that state has collected permit fees that equal or exceed 75 percent of total state NPDES program costs; or
- (B) A state will receive 50 percent of a full share if that state has collected permit fees that equal or exceed 90 percent of total NPDES program costs; or
- (C) A state will receive a full share if that state has collected permit fees that equal 100 percent of total NPDES program costs.

14. *How should states apply for the funding?*

EPA will provide instructions for submitting certifications for the incentive funds in late summer 2008. The instructions will include information on which permitting, compliance and enforcement activities should be included when calculating state level of effort for certification.

15. *How was the rulemaking developed?*

EPA took extraordinary steps to ensure public input on the development of this rule. Although no public comment period is required for a grant regulation, EPA conducted a 60-day comment period, followed by an additional 45-day comment period after interested parties requested an additional opportunity to comment. In preparing the proposed rule for comment, EPA established a rule development process that ensured state input. EPA's Office of Wastewater Management (OWM) held two conference calls to discuss this rulemaking with stakeholders. These stakeholders provided OWM with feedback regarding: what constitutes an "adequate" fee program, what kind of financial incentive should be offered, and how the financial incentive should be structured in terms of size and/or dollar amount. In addition, these stakeholders also provided OWM with suggested planning assumptions to use when reviewing the various incentive options and selecting a final option.

16. *How can I obtain more information?*

For general information about the Section 106 Water Pollution Control Grant Program or technical inquiries, please contact Ben Hamm at (202) 564-0648 (hamm.ben@epa.gov) or Robyn Delehanty at (202) 564-3880, (delehanty.robyn@epa.gov). Copies of the Notice of Final Rulemaking can be downloaded from EPA's Office of Wastewater Management web site at: www.epa.gov/owm/cwfinance/pollutioncontrol.htm.

EPA-832-F-08-056
US ENVIRONMENTAL PROTECTION AGENCY
Office of Wastewater Management (Mail Code 4201M)
1200 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20460
August 2008